

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

B. BRAUN MELSUNGEN AG &	)	
B. BRAUN MEDICAL INC.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 09-347 (JJF)
v.	)	
	)	Jury Trial Demanded
TERUMO MEDICAL CORPORATION &	)	
TERUMO CORPORATION,	)	
	)	
Defendants.	)	

**JOINT [PROPOSED] RULE 16 SCHEDULING ORDER**

Plaintiffs B. Braun Melsungen AG and B. Braun Medical Inc. (collectively "Braun") and Defendants Terumo Medical Corporation and Terumo Corporation (collectively "Terumo") have conferred pursuant to Federal Rule of Civil Procedure 26(f) in connection with the Scheduling Conference set for July 8, 2009. In accordance with the rules, the parties discussed the following matters and submit this Proposed Rule 16 Scheduling Order. The parties are continuing to discuss potential additional agreements and narrowing of issues.

**1. Pre-Discovery Disclosures.**

The parties will exchange by July 31, 2009 the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.1.

**2. Joinder of other Parties.**

All motions to join other parties shall be filed on or before August 21, 2009.

**3. Settlement Conference.**

Pursuant to 28 U.S.C. §636, this matter is referred to Magistrate Judge \_\_\_\_\_ for the purposes of exploring the possibility of a settlement. If the parties agree that they would benefit from a settlement conference, the parties shall contact the Magistrate Judge to schedule a

settlement conference so as to be completed no later than the Pretrial Conference or a date ordered by the Court.

#### **4. Discovery**

##### ***[Defendants' Proposal:***

##### **(a) On Issues of Liability].**

(1) Exchange and completion of contention interrogatories, identification of fact witnesses and document production [***Defendants' Proposal: "on issues of liability"***] shall be commenced so as to be [***Defendants' Proposal: "substantially"***] complete by [***Plaintiffs' Proposal: October 30, 2009; Defendants' Proposal: December 11, 2009***].

(2) All remaining fact discovery [***Defendants' Proposal: "on issues of liability"***] shall be commenced so as to be completed by [***Plaintiffs' Proposal: "January 5, 2010"; Defendants' Proposal: "April 9, 2010"***].

(3) Maximum of [***Plaintiffs' Proposal: "25"; Defendants' Proposal: "15"***] interrogatories, including contention interrogatories, for each side.

(4) Maximum of [***Plaintiffs' Proposal: "50"; Defendants' Proposal: "25"***] requests for admission by each side.

(5) Maximum of [***Plaintiffs' Proposal: "70"; Defendants' Proposal: "40"***] deposition hours by each side, including non-party depositions, but excluding expert depositions. The presumptive seven (7) hour limit per deponent of Fed. R. Civ. P. 30(d)(1) shall apply, but the ten (10) deposition limit of Fed. R. Civ. P. 30(a)(2)(A)(i) shall not apply. [***Plaintiffs' Proposal: "Translated depositions are allowed 10.5 hours of deposition time but shall only count as 7 hours against the total deposition hours (e.g. each 1 hour of a translated deposition counts***

as 2/3 of an hour). No individual witness is required to sit for more than 7 hours of deposition in a single day.”]

(6) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party with the burden of proof on the issue the expert is offered by [*Plaintiffs’ Proposal*: “January 8, 2010”; *Defendants’ Proposal*: “35 days after the issuance of the Court’s Markman decision”]. Rebuttal expert reports are due by [*Plaintiffs’ Proposal*: “January 29, 2010”; *Defendants’ Proposal*: “70 days after the issuance of the Court’s Markman decision”]. Expert depositions shall be completed by [*Plaintiffs’ Proposal*: “February 22, 2010”; *Defendants’ Proposal*: “90 days after the issuance of the Court’s Markman decision”].

[*Defendants’ Proposal*:

(b) On Issues of Damages and Willfulness.

“If appropriate, schedule will be determined after exhaustion of all appeals.”]

## 5. Service

Service of all pleadings and other papers identified in Fed. R. Civ. P. 5(a) shall be via email delivery. The provisions for additional time pursuant to Fed. R. Civ. P. 6(d) shall not apply.

[*Defendants’ Proposal*:

## 6. Limits on Electronic Discovery.

“Electronic discovery will be limited to five (5) custodians of electronic data and there will be no collection or production of email or data from backup tapes.”]

## **7. Non-Case Dispositive Motions.**

(a) Any non-case dispositive motion, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The hearing date selected shall allow time for filing of the motion, allow for briefing in accordance with the Federal and Local Rules, and shall permit all briefing to be filed no later than 12:00 noon the Friday before the motion day on which it is to be heard. Available motion dates will be posted on the Court's website at:

<http://www.ded.uscourts.gov/JJFmain.htm>

(b) At the motion hearing, each side will be allocated ten (10) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be sent to Chambers by-email at:

[jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov)

## **8. Amendment of the Pleadings.**

All motions to amend the pleadings shall be filed on or before [*Plaintiffs' Proposal: "November 6, 2009"; Defendants' Proposal: "January 15, 2010"*].

## **9. Case Dispositive Motions.**

Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before [*Plaintiffs' Proposal: "March 5, 2010"; Defendants' Proposal: "100 days after the issuance of the Court's Markman decision"*]. Briefing shall be pursuant to D. Del. LR 7.1.2. The parties shall follow the Court's procedures for summary judgment motions which is available on the Court's website at:

<http://www.ded.uscourts.gov/JJFmain.htm>

#### **10. Markman.**

A Markman Hearing, if necessary, will be held on [*Plaintiffs' Proposal: "October 22, 2009"; Defendants' Proposal: "January 14, 2010"*]. By [*Plaintiffs' Proposal: "September 1, 2009"; Defendants' Proposal: "October 15, 2009"*], each party shall exchange a list of proposed claim terms that the party contends should be construed by the Court. By [*Plaintiffs' Proposal: "September 14, 2009"; Defendants' Proposal: "November 3, 2009"*], each party shall exchange proposed constructions for all claim terms either party proposed for construction. The parties shall file opening claim construction briefs by [*Plaintiffs' Proposal: "September 25, 2009"; Defendants' Proposal: "November 24, 2009"*], and opposition claim construction briefs by [*Plaintiffs Proposal: October 9, 2009; Defendants' Proposal: December 15, 2009*]. The Court, after reviewing the briefing, will allocate time to the parties for the hearing. Argument shall be limited to one (1) hour per side.

#### **11. Applications by Motion.**

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective June 30, 2007). Any nondispositive motion shall contain the statement required by D. Del. LR 7.1.1 and be made in accordance with the Court's February 1, 2008 Order on procedures for filing non-dispositive motions in patent cases. Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf\_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

## **12. Pretrial Conference and Trial**

### ***[Defendants' Proposal:***

#### **(a) On Issues of Liability].**

(1) The parties shall appear for a Pretrial Conference on ***[Plaintiffs' Proposal: April 19, 2010; Defendants' Proposal: July 12, 2010]***, at \_\_\_\_ a.m./p.m. in Courtroom 4B on the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware. The Federal Rules of Civil Procedure and D. Del. Local Rule 16.3 shall govern the conference.

(2) A seven (7) day jury trial will commence on ***[Plaintiffs' Proposal: "May 10, 2010"; Defendants' Proposal: "August 16, 2010"]***, at 9:00 a.m. in Courtroom 4B on the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware.

***[Plaintiffs' Contingent Proposal (if liability is tried separately): "If liability is found, a schedule for briefing and hearing on an injunction will be determined immediately after entry of jury verdict pursuant to D. Del. LR 7.1.2."; Defendants' Proposal: "If liability is found, a schedule for briefing and hearing on an injunction will be determined after resolution of all post-trial motions and exhaustion of all appeals."]***

### ***[Defendants' Proposal:***

#### **(b) On Issues of Damages and Willfulness.**

***"If appropriate, schedule will be determined after exhaustion of all appeals."]***

YOUNG CONAWAY STARGATT & TAYLOR, LLP · FISH & RICHARDSON P.C.

/s/ Megan C. Haney

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*Attorneys for Terumo Medical Corporation &  
Terumo Corporation*

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DATE

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UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I, Megan C. Haney, Esquire, hereby certify that on July 6, 2009, I caused to be electronically filed a true and correct copy of *Joint Proposed Rule 16 Scheduling Order* with the Clerk of the Court using CM/ECF.

I further certify that on July 6, 2009, I caused a copy of the foregoing document, to be served in the manner indicated below.

**BY HAND DELIVERY AND E-MAIL:**

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*/s/ Megan C. Haney*

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